

**Tsarkov, Alex**

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**From:** David K [davidk1233@comcast.net]  
**Sent:** Wednesday, March 23, 2011 10:56 PM  
**To:** Tsarkov, Alex  
**Subject:** From David Kelman4: Written Testimony is Support of HB6620, HB1205, HB1208 Condo Bills; For Public Hearing 3/25/11

Written Testimony is Support of HB6620, HB1205 and HB1208; For Public Hearing 3/25/11

## **Lawmakers To Address Condo Bills Aimed At Abuses**

**Posted on 02 March 2011 by The Hartford Guardian**

**By Ann-Marie Adams, Staff Writer**

WEST HARTFORD — Rodvald Jones felt vindicated.

A Hartford Superior Court Judge last January ruled that a condo association was negligent in its duty to protect Jones' rights before initiating foreclosure proceedings in 2004.

The association filed a complaint, claiming Jones owed two months condo payments, less than \$600. The association's lawyer took no further action on the complaint, refused payments for six months and then withdrew the complaint after collecting \$20,000. Jones had to sue his association to get relief. His counterclaim, *TWINOAKS CONDO V JONES*, he asserted, among other things, statutory theft and breach of contract. And a jury awarded him \$25,000.

Twin Oaks Condominium Association Inc. no longer uses Imagineers LLC., the management company Jones battle with for several years. The association replaced its West Hartford-based attorney, Rosenberg and Rosenberg, P.C., with another law firm on the appeal case.

Although Jones received some relief, he said, the fight continues.

"There has been a tremendous loss," he said. "That management company damaged not just my life but a lot of people's lives."

Jones is not alone in his bitter struggle against an association he assumed would protect his rights. Across Connecticut and the nation, similar stories abound. Condo owners are now pressuring lawmakers to address reports of abuse, neglect and unethical violations. In January, several Connecticut lawmakers introduced bills to specifically address these concerns.

**Sen. Paul Doyle**

Sen. Paul Doyle (D-Rocky Hill) of the 9<sup>th</sup> district introduced Bill 797. The aim is to prohibit condominium association from foreclosing on a unit unless the overdue condo fees and fines are at least three months past due, or at least \$2,000. Currently condo associations can begin foreclosure actions if someone is two months past due and the amount is less than \$600.

The judiciary committee will hold a public hearing on Bill 797 in the Legislative Office Building Room 210 on Friday, March 4 at 10 a.m.

### **Condo Complaints and Concerns**

In Connecticut, about 500 complaints have been filed with the state attorney general's office, which prompted former State Attorney General Richard Blumenthal to propose a bill to create a State Ombudsman position, as in Florida, Virginia and other states. That person would oversee internal misconduct with the state's reportedly 250,000 condo associations.

In his statement to the legislature last year, Blumenthal said: "Many of the complaints received by my

office concern failures by association boards of directors to follow basic governance principles, such as adopting an annual budget with notice to the unit owners, holding fair elections for the board of directors, providing key financial information about the association and fairly imposing association fines. Some of these complaints are based on deliberate indifference by association boards to association bylaws or state condominium laws."

Doyle said he has been fielding calls from lobbyists, who opposed these bills. These lobbyists represent property managers and lawyers and others who do business with condo associations. For every foreclosure action that begins—even if it's withdrawn, a lawyer can charge the condo association up to \$2,000. If it's a contested foreclosure, where the unit owner has a defense, the lawyer's fees could exceed \$20,000, depending on how long the case stays in court. By law, the condo owner is responsible for the association lawyer's fee.

In some cases lawyer's fees jump to as much as \$45,000, according to one source. Lawyers have reasons to delay, sources say, because mortgage banks usually pay the alleged amount before owners emerge from a mix of confusion and shock, or muster up courage to defend themselves.

More than half of the \$20,000 collected in Jones' case allegedly went toward attorney fees. If the condo is foreclosed on and sold, the association, under state law, would only be allowed to collect six months condo fees in arrears before the bank collects. This, some say, begs the question: why go that far if the goal is really to get monthly assessments? In most cases, there is very little equity in a condo after a sale to pay off the bank and the associations.

Extreme cases such as that are rare in Florida, said Larry Tolchinsky, a Florida real estate lawyer.

"That's clearly an abuse of practice where the Bar Association needs to get involved," Tolchinsky said. "I don't have all the facts, but that sounds like an ethical violation."

Scott Sandler agrees and said Jones' situation seemingly stems from a lawyer's policies and practices rather than the absence of a law to address missed payments.

"A few have fallen on difficult times and can't pay common charges," said Sandler, a foreclosure lawyer. "I usually seek a way to work out payment plans."

Sandler chairs the Legislative Action Committee for the Connecticut chapter of Community Associations Institute. The LAC is lobbying hard against Bill 797 and others that call for condo association reform, including the Ombudsman bill. These bills, he said, would curtail efforts to collect fees.

In the past, Sandler and other CAI lobbyists have been successful.

"Associations need to act quickly toward foreclosure," Sandler said. "We have to have a quick way to collect past due fees." CAI's Executive Director Kim McClain, in a statement to *The Guardian*, said the CAI advocates flexibility and compassion in collection policies and procedures in times of difficulties, illness, loss of employment or other economic problems. The main goal of the organization, she said, is to educate their members about best practices and good communication.

But that has not been the case with many instances of foreclosure currently in court. In one case, a young married couple at Oakwood Condominium saw their bill go from \$600 to more than \$10,000 in less than six months, according to their lawyer, Wayne Francis. The wife, who was pregnant, had to be taken to the hospital on several occasions because of stress induced by Rosenberg and Rosenberg, he said.

Another of his client from Middletown was also taken to court by Rosenberg and Rosenberg. In this case, Francis said, the owner filed a grievance against Rosenberg. The Statewide Bar Counsel forwarded the case to a grievance panel that saw no misconduct. In another case, a condo owner accused her attorney of allegedly colluding with Rosenberg. The assistant chief disciplinary counsel, Suzanne Sutton, decided the case had no merit even after the grievance panel had already determined gross negligence and probable cause in the case. When asked about her decision "not to go forward with the case," she said she knows the attorney. With that avenue closed to individuals for relief from predatory tactics of lawyers acting as collection agents, condo owners file grievances with the attorney general's office.

Attorney George Jepsen's spokeswoman said in the first two weeks of January, there were already nine condo complaints, which included five from Millpond and two from Kingsbury association. Other groups that have filed complaints in the past include Towpath Association in Avon and Mayberry Village in Middletown, which are both managed by Elite Property Management. Getting no relief, several condo owners have also formed a group to advocate for reform. The Ombudsman bill would curb the abuse of power by volunteer board members and property managers who lack knowledge of the instruments that are already in place, said Isabella Fusillo, a lawyer and a member of the newly formed group, Connecticut Condo Owners Coalition. Jones agreed, saying his association's board president claimed ignorance about the dealings of the law firm. When called,

Rosenberg refused comment.

"The laws on the books are very clear," Jones said. "They just need to be enforced."

#### **Limitations on Current Law**

Condo foreclosures have rapidly increased, making up a significant number of the overall foreclosure proceedings in the court systems across the nation. And while lawmakers are quickly finding ways to stem the number of bank foreclosures that have crippled economic recovery, many have anemic responses to condo foreclosures.

Currently, the state mandates that all banks enter mediation before they foreclose on a house. But this is not required for condo associations. In some states like Connecticut, associations can close quicker than banks because they have first priority. In addition, the department of consumer protection and the state attorney general's office claim they do not have the authority to address condo unit owners' concerns because associations are not businesses. Consequently, condo owners have no protection from unscrupulous lawyers, management companies or incompetent board members, Fusillo said.

"The problem we have is that we have board members and management companies not familiar with their own instrument and the Common Interest Ownership Act," said Fusillo, who was also in a tussle with her own condo association. "I realized there was no enforcement of the laws already there. That was a problem."

Senator Doyle's bill is only one of 10 bills introduced this year to address that and more problems posed by the wave of condo foreclosures in the state. The other nine bills are aimed at stemming a tsunami of bank foreclosures that have flood the state courts since 2007.

Doyle's bill is just barely a beginning, however. It does not address loopholes in the law that allowed for the "horrific" saga Jones endured for three years. The bill does not address circumstances in which condo owners send payments to the association and the association returns those payments, saying there is no law that mandates acceptance of payments, according to court documents. And associations can still claim owners failed to pay monthly assessments because they refused to deposit owners' checks. These and other stories of abuses are across the state, including Avon, Bloomfield, West Hartford, Danbury, Rocky Hill and Middletown. And few lawyers take on these cases. The preference is to represent associations, with an active lobby group, condo reform advocates say.

Sandler, who has "developed relationships" at the Capitol, sent emails to Doyle opposing the bill. Sandler said the bill is just another layer of bureaucracy to cripple the associations' efficiency with foreclosures, and if passed, would place small condo associations in financial ruin. Besides, he said, there are already mechanisms in place to curb unethical practices.

"The courts are already there to guard against abuses," Sandler said. He also said he's unfamiliar with Jones' case, or any other types of abuses. "Someone maybe needs to take a look at how that particular law firm is doing business."

#### **CT, Land of Condos**

Sandler said Connecticut is the land of condos. The largest condo association is Heritage Village with 2,580 units in Southbury for those over 55 and Farmington Woods with about 1,081 units. Most condo associations unit ranges from 6 to 100. The goal of the CAI, according to its website, is to educate professionals who do business with these associations' board volunteers. In doing so, the CAI aims to foster "harmonious community associations within the state."

Fusillo said that has clearly not been the practice. Her group has tried to work out a compromise on the ombudsman bill, but there was no agreement. In addition, individual unit owners lack a strong voice in the CAI's decision making process because many individuals cannot afford the yearly membership of \$114. Moreover, single unit owners do not have money to hire lobbyists. Clearly, Fusillo said, the unit owners are at a disadvantage.

"These management companies and lawyers make money off the backs of condo owners," she said. "We need some accountability."

Jones agreed and said he and other condo owners at Twin Oaks are also looking for accountability. Because of years of "neglect and vindictiveness," the association has caused tremendous harm. Imagineers and Rosenberg refused comment.

"The state really needs to step in," Jones said. "There's gross abuse of power by some of these property managers and lawyers. There should be someone to monitor them."

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